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IN THE

Supreme Court of the United States

October Term, 1928

No. 98

Lash's Products Company, Petitioner,

vs

The United States

BRIEF FOR PETITIONER

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HISTORY AND JURISDICTION

This case arises under the Revenue Act of 1918 (R. p. 13; Finding IV). The opinion of the United States Court of Claims in this case has not yet been officially reported. The judgment of the Court below was entered November 7, 1927 (R. pp. 16-17). Motion for new trial was overruled January 23, 1928 (R. p. 17). The Writ of Certiorari was granted herein May 28, 1928.

Petitioner claimed in the Court below that it was required by law to pay the beverage sales tax on only

10/11ths of the amounts it received from its purchasers, which included the price of its products and also the 10 per centum beverage tax thereon, while the Court below held that it was required to pay the 10 per centum beverage sales tax upon the entire amount received by it from its purchasers (R. pp. 7-8; Section VII Amended Petition; Opinion of Court, R. p. 16, Second Paragraph; Judgment of Court, R. pp. 16-17).

The jurisdiction is invoked under Chapter 229, Section 3 (b) of "An Act to Amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals, and of the Supreme Court, and for other purposes," approved February 13, 1925 (43 Stat. L. 939). The jurisdiction of this Court is sustained by its opinions in the following cases:

Forsyth v. *Hammond* (366 U. S. 506; 41 L. ed. 1095);
Fields v. *United States* (205 U. S. 292; 51 L. ed. 807);
Hamilton Brown Shoe Co. v. *Wolf Bros. Co.* (240 U. S. 251; 60 L. ed. 629);
Magnum Import Company v. *Coty* (262 U. S. 159; 67 L. ed. 922).

STATEMENT OF THE CASE

Prior to 1919, Petitioner was engaged in the manufacture of cordials, syrups, and laxative medicinal preparations (R. p. 12; Finding I).

In June, 1919, it began the manufacture and sale of soft drink products at wholesale, which were sold direct by its salesmen, who called upon the purchasers

and told them that the prices quoted for these soft drinks included the beverage sales tax of 10 per centum, which Petitioner was required by statute to report and pay. Petitioner also notified the purchasers by letter under date of June 28, 1919, to the same effect (R. pp. 12-13; Finding III).

During the period involved in this case, Petitioner received $2,475,031.44 from its soft drink sales at the prices quoted therefor, which included the beverage sales tax and reported said sales and paid as tax thereon $247,503.16, under the presumed requirements of the Revenue Act of 1918 (R. pp. 12-13; Findings III, IV). These soft drinks were billed or invoiced to the purchaser without separate itemization or indication of the price of the goods and also the amount of the beverage sales tax thereon (R. p. 13; Finding IV).

Petitioner duly filed refunding claims with the Commissioner of Internal Revenue for $22,500.33, claimed to have been erroneously computed and overpaid by it as beverage sales tax on said sales, which claims were disallowed by said Commissioner on the ground that Petitioner "did not indicate the tax in such a way as not to be a part of and included in the price," for which the product was sold (R. p. 14; Finding V). Thereafter, Petitioner brought suit in the Court of Claims for said amount, on the ground that it had paid a 10 per centum beverage sales tax on the entire amount received from its purchasers of soft drinks, which included said 10 per centum beverage sales tax, instead of on the actual price it received for the soft drinks "so sold" (R. pp. 7-8; Section VII, Amended Petition). This petition was dismissed by said Court (R. pp. 16-17).

Assignment of Errors To Be Urged

1. The Court erred in holding that the tax must be paid upon the total amount received from the purchasers of Petitioner's soft drinks.

2. The Court erred in holding that it was legally necessary for Petitioner's bills or invoices for soft drinks to separately show or indicate both the amount Petitioner was to receive for its soft drinks and the tax thereon, in order to enable Petitioner to pass this tax on to the purchasers.

3. The Court erred in holding that the Commissioner of Internal Revenue can, by regulation, deprive Petitioner of its right to show the true price for which its goods were sold, and thereby increase the statutory rate of the beverage sales tax from 10 to 11 per centum of the price it actually received for its soft drinks, because Petitioner's bills or invoices did not separately itemize or indicate both the price of the goods "so sold" and the amount of the sales tax thereon.

ARGUMENT

The Law and Pertinent Facts

This case arises under the provisions of Sections 628 and 629 of the 1918 Revenue Act (40 Stat. L. 1116), which are as follows:

> "Sec. 628. That there shall be levied, assessed, collected, and paid in lieu of the taxes imposed by sections 313 and 315 of the Revenue Act of 1917—
>
> "(a) Upon all beverages derived wholly or in part from cereals or substitutes therefor, and containing less than one-half of one per centum of

alcohol, sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax equivalent to 15 per centum of the price for which so sold; and upon all unfermented grape juice, ginger ale, root beer, sarsaparilla, pop, artificial mineral waters (carbonated or not carbonated), other carbonated waters or beverages, and other soft drinks, sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax equivalent to 10 per centum of the price for which so sold; and

"(b) Upon all natural mineral waters or table waters, sold by the producer, bottler, or importer thereof, in bottles or other closed containers, at over 10 cents per gallon, a tax of 2 cents per gallon.

"Sec. 629. That each manufacturer, producer, bottler, or importer of any of the articles enumerated in section 628 shall make monthly returns under oath in duplicate and pay the taxes imposed in respect to such articles by such section to the collector for the district in which is located the principal place of business, containing such information necessary for the assessment of the tax, and at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

"The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due."

As shown by Finding I, prior to June, 1919, Petitioner was engaged in the manufacture and wholesal-

ing of cordials, syrups, and laxative medicinal preparations.

As shown by Finding III, in June, 1919, Petitioner began the manufacture and sale of soft drinks to the retail trade. Its sales were made direct by salesmen, who called upon the purchasers and informed them its prices for soft drings included the 10 per centum beverage sales tax thereon, which it would pay as required by the statute.

As shown by Finding IV, Petitioner's invoices for soft drinks were not itemized so as to separately show or indicate the amount of the tax included therein, and that Petitioner reported and paid as such beverage sales tax a sum equal to 10 per centum of the total amount it received from the purchasers of its soft drinks during the period covered by this case.

As shown by Finding V, Petitioner duly filed its refunding claims for the amount herein sued for, which were disallowed on the ground that Petitioner did not indicate the tax in such a way as not to be a part of and included in the price for which its soft drinks were sold.

Errors in Court Below

1. The Court erred in holding that the tax must be paid upon the total amount received from the purchasers of Petitioner's soft drinks.

From the foregoing facts, it will be seen that Petitioner's customers must have understood when they bought its soft drinks they not only had to pay for the soft drinks, but also the 10 per centum tax thereon. Therefore, it is obvious that Petitioner intended to pass this 10 per centum beverage sales tax on to its

purchasers when it contracted with them that the prices they paid for its soft drinks would include this tax.

The beverage sales tax is one of those taxes that may be passed on to the purchaser. This seems to be clearly recognized by the provisions of Section 1312 of the 1918 Revenue Act, and is also frankly admitted by Treasury Regulations No. 52, relating to the administration of Sections 628 and 629 of that Act, and in the Commissioner's interpretation in January, 1921, of Article 8 of these Regulations. This article is as follows:

> "Art. 8. *Basis for tax; sale price.*—The tax is on the sale by the manufacturer of the beverage. It is measured by the price for which the beverage is sold. It is on the actual sales price of the beverage sold and not on the list price where that differs from the sales price. If the sales price of a taxable beverage is increased to cover the tax, the tax is on such increased sales price, but where the tax is billed as a separate item it is not to be considered as an increase in the sale price. The tax is payable in respect to a sale made whether or not the purchase price is actually collected."

The Commissioner's interpretation of this article is as follows:

> "Article 8 of Regulations 52 provides that the tax is measured by the price for which the beverage is sold by the manufacturer and that if the price of the beverage is increased to cover the tax the tax is on such increased price which includes the amount added by the manufacturer to cover the tax.

"On the other hand, if the price is not increased to cover the tax, but the manufacturer quotes the price of the beverage and the amount of the tax as separate items and in the exact amounts represented by such items, and, in the event bills or invoices are rendered, shows the items separate therein, the tax does not attach to the amount representing tax on the selling price of the product.

"In other words, the theory of the regulations is that the tax is on the price for which the manufacturer sells his product at the time and place where he sells it; that this price must be clearly indicated in quotations and invoices, but that if other items, such as transportation expenses or tax are included in the selling price without segregation, the tax must be based on the total selling price including such other items. It is not sufficient for the purpose of current returns that the books or records of the manufacturer show the different items entering into the selling price, if the purchaser is not fully informed by quotation in advance of the sale, and by the invoice for the goods, when such invoice is made, of the different items entering into the quoted or invoiced price." (Sales Tax Rulings, Cumulative Bulletin, Nos. 113-265; January-June, 1921, pp. 27-9.)

Neither the Revenue Act of 1918 nor the Regulations of the Commissioner of Internal Revenue issued thereunder contemplate that taxes imposed on the price for which goods were sold by manufacturers should be borne by the manufacturer. Sec. 1312 of the Act specifically provides that in all cases where there were in existence contracts between manufacturers and dealers for the sale of articles so taxed by the Act, but which did not permit the adding to the amounts to be paid under the contract of the whole of the tax

imposed, the vendee, in lieu of the vendor, should pay so much of the tax imposed by the Act as was not permitted to be added to the contract price, and that the tax so paid by the vendee should be collected by the vendor at the time sales were consummated and returned by the vendor to the United States.

In addition to the Commissioner's said interpretation of Article 8 of his Regulations 52, Regulations 47, revised December 1920, well illustrates the interpretation placed upon the taxes imposed on sales by Section 900 of the Act of 1918, and authorizes the exclusion of the tax from the price of the articles in computing tax under the following conditions:

(a) By quoting the selling price and the tax in separate and exact amounts, and where invoices are rendered by segregating these amounts on invoices.

(b) By stating to the purchaser in advance of sale what portion of the quoted price represents the price charged for the article and what portion represents tax, and where invoices are rendered in the following manner:

> *Example 2.* A, the manufacturer, quotes a selling price of $1.05, stating that the price included a tax of 5 cents and bills the goods to B as
>
> "Article No. 1, selling price $1.05, 5 cents of the total represents tax," or
>
> *Example 3.* A, the manufacturer, quotes a selling price of $1.05, stating that 1/21st of the price represents the tax and bills the goods to B as
>
> "Article No. 1, selling price $1.05, 1/21st of the total represents tax."

To the extent that these regulations excluded the tax from the price in computing the tax upon sales

the regulations are in harmony with the provisions of Sec. 1312, and manifest the recognition by the Commissioner that the true basis of the tax on the price for which goods are sold is the actual return to the manufacturer, and not the amount of such return plus tax.

The Commissioner excludes the amount of the tax from the price before computation of tax, where no invoices were rendered, merely upon it being stated to the purchaser in advance of the sale what portion of the quoted price represented the price charged for the article and what portion represented the tax; but where invoices were used the Regulations make the exclusion of the tax dependent upon the manufacturer inscribing upon the invoice a prescribed form of statement that the price includes a definite amount or proportion on account of the tax. Obviously, when the tax was included in the amount charged to the vendee the amount realized from the sale or the vendor's actual selling price was the same whether or not the articles were subsequently invoiced by the vendor, or, if invoiced, whether or not the invoice bore a notation that so many cents or a specified percentage of the total represented the tax.

The Regulations evidently intend that the taxes should be paid by the vendee and imposes upon the manufacturer, or at least, upon those sufficiently familiar with their terms, the sole obligation of collecting the tax from the vendee. It is certain that the Commissioner, in announcing to manufacturers his methods for collecting the tax from their vendees, did not expect the manufacturer to bear the burden of it.

In *American Express Company* v. *Michigan* (177

U. S. 404; 44 L. ed. 823) it was argued that the burden of the tax there involved could not be passed on to the shipper, or purchaser, of the services furnished by the company. However, this Court in very forceful language refused to concur in that argument and upheld the action of the company in requiring its customers to pay the tax and, among other things, the Court holds, at page 410:

> "On the contrary, if the right to seek to shift the burden obtains, then the substantial result of what is done becomes the criterion, and the mere fact that the motive, announced, for a reasonable increase of rates, is declared to be a shifting of the burden, cannot prevent the exercise of the lawful right."

At page 412 the Court holds:

> "In other words, the contention comes to this, that the act in question is not alone a law levying taxes and providing the means for collecting them, but is moreover a statute determining that the burden must irrevocably continue to be upon the one on whom it is primarily placed. The result follows that all contracts or acts shifting the burden, and which would be otherwise valid, become void. To add by implication such a provision to a tax law would be contrary to its intent, and be in conflict with the general object which a law levying taxes is naturally presumed to effectuate. Indeed, it seems almost impossible to suppose that a purpose of such a character could have been contemplated, as the widest conjecture would not be adequate to foreshadow the far-reaching consequences which would ensue from it. To declare upon what person or property all taxes must primarily fall is a usual purpose of a law levying

taxes. To say when and how the ultimate burden of a tax shall be distributed among all the members of society would necessitate taking into view every possible contract which can be made, and would compel the weighing of the final influence of every conceivable dealing between man and man. A tax rests upon real estate. Can it be said by the law imposing such a tax it was intended to prevent the owners of real property from taking into consideration the amount of a tax thereon, in determining the rent which is to be exacted by him? A tax is imposed upon stock in trade. Must it be held that the purpose of such a law is to regulate the price at which the goods shall be sold, and restrain the merchant, therefore from distributing the sum of the tax in the price charged for his merchandise? As the means by which the burdens of taxes may be shifted are as multiform and as various as is the power to contract itself, it follows that the argument relied on if adopted would control almost every conceivable form of contract, and render them void if they had the result stated. Thus, the price of all property, the result of all production, the sum of all wages, would be controlled irrevocably by a law levying taxes, if such a law forbade a shifting of the burden of the tax and avoided all acts which brought about that result. It cannot be doubted that to adopt, by implication, the view pressed upon us, would be to virtually destroy all freedom of contract, and in its final analyses would deny the existence of all rights of property."

In consideration of the foregoing, it would therefore appear that when Petitioner contracted with its purchasers, as shown by Finding III, that they should pay the beverage sales tax as a part of the price of the soft drinks they purchased from the Petitioner, it thereby legally effected a shifting of the burden of

this tax to its said purchasers.

As Petitioner was without experience in the computation of the sales tax until June, 1919, when it began its soft drink business, we think it must be reasonably assumed when the time arrived to compute and pay this tax on its soft drink sales of that month that it consulted the proper representatives of the Defendant and followed their instructions in determining the amount of sales tax it should pay, and that it continued this same method of computation for the entire period involved herein.

Nevertheless, it must be remembered that when Petitioner had finally considered the matter it decided that it had overpaid the amount of this tax, which was legally due from it and, therefore, as shown by Finding V, filed its refunding claims in the amount herein sued for, which were disallowed, because Petitioner had not itemized in its bills or invoices the gross price received for its soft drinks so as to separately show the amount of the tax and the amount it was to receive for its soft drinks.

In view of the contracts, as shown by Finding III, under which its customers purchased these soft drinks, it is respectfully submitted that the sales tax thereon was legally passed on to the purchasers, notwithstanding the provisions of Article 8 of the Commissioner's Regulations 52, and his interpretation thereof, and that the Court below erred in holding that the tax must be paid upon the total amount received from the purchasers of its soft drinks.

2. The Court erred in holding that it was legally necessary for Petitioner's bills or invoices for soft drinks to separately show or indicate both the amount Petitioner was to receive for its soft drinks and the

tax thereon, in order to enable Petitioner to pass this tax on to the purchasers.

The Court below seems to have misapprehended the facts to some extent in regard to Petitioner's soft drink business, as the second sentence of its opinion states that:

> "Sales were made to the retail trade, who were informed by the salesmen that the price of Plaintiff's product would not be increased on account of the beverage tax imposed by the revenue act of 1918, but that the price would remain the same as before the act was passed" (R. p. 15).

As Finding III shows Petitioner did not begin its manufacture and sale of soft drinks until June, 1919, although the Revenue Act of 1918 was approved February 24, 1919, and as there is no finding of fact in support of the Court's declaration just quoted, this statement in its opinion seems to be without foundation.

It should be noted here that bills or invoices do not possess the character of contracts. At best, they are merely memoranda of certain transactions occurring within the provisions of the contracts under which they arise. Certainly, the actual contract, and not a memorandum referring to it, should be the criterion to determine whether or not the Petitioner legally shifted the burden of this tax to its purchasers, so that the price for which its soft drinks were actually sold under these contracts was only 10/11th of the amount it received from said purchasers. In other words, Article 8 of the Commissioner's Regulations and his interpretation of that Article rest upon mere form rather than substance. The contents of the bill or invoice cer-

tainly should not be held to override the specific provisions of the contracts under which Petitioner sold soft drinks to the purchasers and thereby determine what amount of beverage sales tax it was legally required to pay. It would also seem that the information Petitioner gave its purchasers that the price of its soft drinks included the 10 per centum beverage sales tax thereon constituted all the notice of that fact that could reasonably be required and, therefore, the giving of such information in advance of the sales should be held to amount to a satisfactory compliance with the intent and meaning of the Regulation.

The identical questions here involved were very carefully considered by Judge Brewster in *Clicquot Club* v. *United States* (13 Fed. (2nd) 655, which was not appealed), where it was held that the beverage sales tax accrued upon 10/11th of the amount received from its purchasers, rather than the total amount thereof, which included the beverage sales tax, although, as in the case at bar, the bills or invoices did not separately show or indicate the amount of such tax.

The Court's attention is also invited to the opinion of the United States Circuit Court of Appeals in *Elmer Candy Company* v. *Fauntleroy* (24 Fed. (2nd) 95; Adv. Op.), where similar questions were considered, and the Court held:

> "Apparently the only thing that could prevent a recovery in this case is the technicality regarding the manner of rendering invoices. We think what was done by Plaintiff in notifying its customers that the price would include the tax comes within the meaning and intent of clause B above quoted, and that, Plaintiff having in effect stated to the purchasers in quoting prices what portion

> represented the prices charged for the article and what portion represented the tax, the technicality should be disregarded."

In consideration of the foregoing, it is respectfully submitted that the Court below erred in holding that it was legally necessary for Petitioner's bills or invoices for soft drinks to separately show or indicate both the amount Petitioner was to receive for its soft drinks and the tax thereon, in order to enable Petitioner to pass this tax on to the purchasers.

3. The Court erred in holding that the Commissioner of Internal Revenue can, by regulation, deprive Petitioner of its right to show the true price for which its goods were sold, and thereby increase the statutory rate of the beverage sales tax from 10 to 11 per centum of the price it actually received for its soft drinks, because Petitioner's bills or invoices did not separately itemize or indicate both the price of the goods "so sold" and the amount of the sales tax thereon.

The Commissioner's authority to make regulations for the administration of this beverage sales tax is contained in Section 1309 of the Revenue Act of 1918, which, so far as pertinent, is as follows:

> "That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act."

The question, therefore, arises whether it was "needful" for the administration of this tax that Petitioner, and other taxpayers subject thereto, should be limited to statements made in their bills or invoices, in order to determine the actual price for which their soft

drinks were sold, and whether or not they had shifted the burden of this tax on to the purchasers.

It is beyond reasonable doubt that the terms of the contracts under which the soft drinks were sold furnished the best evidence of the actual price for which they were "so sold" and for determining whether the burden of this tax had been shifted to the purchasers. In discussing a somewhat similar technical regulation, this Court, in *Waite* v. *Macy*, (246 U. S. 606), at page 610, held that:

> "The Secretary and the board must keep within the statute (*Merritt* v. *Welsh*, 104 U. S. 694, 26 L. Ed. 896), which goes to their jurisdiction, * * *"

Therefore, as there seems to be no need for the regulation limiting the proof of these facts to the statements in the bills or invoices for the soft drinks sold, and as the statute contains no authority whatever for any such limitation, the regulation in this respect does not appear to be supported by any appropriate authority of law, and should, therefore, be held null and void, in so far as it prescribes that the contents of the bills or invoices shall determine the actual selling price of the soft drinks "so sold," rather than the actual contract of sale.

The regulation in this respect is also objectional for the reason that it is an attempt to extend the provisions of the law so as to make the contents of bills or invoices the sole evidence from which to determine the actual price for which Petitioner's goods were "so sold," and to exclude from consideration all other evidence of the true selling price. If Congress had

intended to place any such limitation upon the evidence by which to determine the actual price for which soft drinks were "so sold," it would have expressed that intention in appropriate language. As no such language is contained in the statute, this is proof positive that it had no such intention. This Court, in *Morrill* v. *Jones* (106 U. S. 466, 27 L. Ed. 267), denied the right of administrative officers to make such regulations when it held, at page 467, that—

> "The Secretary of the Treasury cannot, by his regulations, alter or amend a revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."

For this reason also, the regulation, in so far as it attempts to limit the evidence from which to determine the actual price for which petitioner's soft drinks were "so sold," should be held null and void.

The regulation in this respect is also objectionable because it discriminates between taxpayers who notified the purchasers in advance that the prices of its soft drinks included the tax, by permitting those who separately showed or indicated the amount of the tax in their bills or invoices to shift its burden to the purchasers, while those whose bills or invoices did not show or indicate the tax were denied this right, with the result that, in effect, the Commissioner required the latter to pay the tax at the rate of 11 per centum while permitting the former to pay at the rate of 10 per centum. Also where bills or invoices were not used, the manufacturer who quoted a price including the tax and also separately stated the amount he re-

ceived for his goods and the amount of the tax thereon is permitted to pass the tax on to the purchasers, while the manufacturer who informed his purchasers that the price he quoted also included the tax was denied this right. It is submitted that it was not the intention or purpose of Congress to permit any such discrimination.

Because the regulation thus discriminates between taxpayers in these respects and violates the rule of equality in taxation, it should be held null and void.

The regulation is still further objectionable because by thus discriminating between taxpayers it, in effect, increased the statutory rate for such taxpayers as did not show or indicate the amount of the tax in their bills or invoices from the statutory rate of 10 to 11 per centum of the actual price for which their goods were "so sold," as in the case at bar. In *United States* v. *United Verde Copper Company* (196 U. S. 207; 49 L. Ed. 449) this Court held at page 215 that—

> "If rule 7 is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can define one term, he can another. If he can abridge, he can enlarge. Such power is not regulation: it is legislation. The power of legislation was certainly not intended to be conferred upon the Secretary."

Because the effect of the regulation thus increases the tax rate of this petitioner from 10 to 11 per centum without any legal authority whatever therefor, the regulation in this respect should be held null and void.

The regulation is still further objectionable because it violates the well settled rule for the construction of taxing statutes that where any ambiguity exists the

doubt should be resolved in favor of the taxpayer. Evidently this provision of the Commissioner's regulation is based upon the assumption by him that there is ambiguity in the statute as to the determination of the actual price for which the soft drinks were "so sold." This Court, in *United States* v. *Merriam* (263 U. S. 187-8; 68 L. ed. 244), held as follows:

> "On behalf of the government it is urged that taxation is a practical matter, and concerns itself with the substance of the thing upon which the tax is imposed, rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer. *Gould* v. *Gould*, 245 U. S. 151; 62 L. ed. 211, 213; 38 Sup. Ct. Rep. 53."

For this reason, the regulation in this respect should be held null and void.

The regulation in this respect is still further ojectionable, because, as plainly appears from the foregoing, it is arbitrary and unreasonable and repugnant to the principles of fair and just treatment of its citizens by the Government, unless it be held that Petitioner's notice to the purchasers of its soft drinks that its price would include the beverage sales tax thereon was a satisfactory compliance with the intent and meaning of the Commissioner's regulation.

Therefore, unless it be so held, the regulation in this respect should be held null and void.

For all of the reasons stated, it is therefore respectfully submitted that the Court erred in holding that

the Commissioner of Internal Revenue can, by regulation, deprive Petitioner of its right to show the true price for which its goods were sold, and thereby, in effect, increase the statutory rate of the beverage sales tax from 10 to 11 per centum of the price it actually received for its soft drinks, because Petitioner's bills or invoices did not separately itemize or indicate both the price of the goods so sold and the amount of the sales tax thereon.

CONCLUSION

In consideration of the reasons hereinbefore set forth, and especially in view of the fact that Petitioner's salesmen personally called upon its customers and notified them that the gross price charged for its soft drinks included both the amount Petitioner was to receive in compensation for its merchandise and the 10 per centum beverage sales tax thereon, in advance of the sale of the merchandise and before bills or invoices could issue therefor, it is respectfully submitted that the decision of the Court below should be reversed and that Petitioner should have judgment for $22,500.33, with interest thereon as provided by law.

Respectfully submitted,

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